

Chapter 39 Child Protection Registry

Part 1 General Provisions

13-39-101 Title.

This chapter is known as the "Child Protection Registry."

Enacted by Chapter 338, 2004 General Session

13-39-102 Definitions.

As used in this chapter:

- (1) "Contact point" means an electronic identification to which a communication may be sent, including:
 - (a) an email address; or
 - (b) subject to Subsection 13-39-201(2):
 - (i) an instant message identity, subject to rules made by the division under Subsection 13-39-203(1);
 - (ii) a mobile or other telephone number;
 - (iii) a facsimile number; or
 - (iv) an electronic address:
 - (A) similar to a contact point listed in this Subsection (1); and
 - (B) defined as a contact point by rule made by the division under Subsection 13-39-203(1).
- (2) "Division" means the Division of Consumer Protection in the Department of Commerce.
- (3) "Registry" means the child protection registry established in Section 13-39-201.

Amended by Chapter 336, 2006 General Session

Part 2 Operation of the Child Protection Registry

13-39-201 Establishment of child protection registry.

- (1) The division shall:
 - (a) establish and operate a child protection registry to compile and secure a list of contact points the division has received pursuant to this section; or
 - (b) contract with a third party to establish and secure the registry described in Subsection (1)(a).
- (2)
 - (a) The division shall implement the registry described in this section with respect to email addresses beginning on July 1, 2005.
 - (b) The division shall implement the registry described in this section with respect to instant message identities.
 - (c) The division shall implement the registry described in this section with respect to mobile or other telephone numbers.
- (3)

- (a) A person may register a contact point with the division pursuant to rules established by the division under Subsection 13-39-203(1) if:
 - (i) the contact point belongs to a minor;
 - (ii) a minor has access to the contact point; or
 - (iii) the contact point is used in a household in which a minor is present.
- (b) A school or other institution that primarily serves minors may register its domain name with the division pursuant to rules made by the division under Subsection 13-39-203(1).
- (c) The division shall provide a disclosure in a confirmation message sent to a person who registers a contact point under this section that reads: "No solution is completely secure. The most effective way to protect children on the Internet is to supervise use and review all email messages and other correspondence. Under law, theft of a contact point from the Child Protection Registry is a second degree felony. While every attempt will be made to secure the Child Protection Registry, registrants and their guardians should be aware that their contact points may be at a greater risk of being misappropriated by marketers who choose to disobey the law."
- (4) A person desiring to send a communication described in Subsection 13-39-202(1) to a contact point or domain shall:
 - (a) use a mechanism established by rule made by the division under Subsection 13-39-203(2); and
 - (b) pay a fee for use of the mechanism described in Subsection (4)(a) determined by the division in accordance with Section 63J-1-504.
- (5) The division may implement a program to offer discounted compliance fees to senders who meet enhanced security conditions established and verified by the division, the third party registry provider, or a designee.
- (6) The contents of the registry, and any complaint filed about a sender who violates this chapter, are not subject to public disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.
- (7) The state shall promote the registry on the state's official Internet website.

Amended by Chapter 183, 2009 General Session

13-39-202 Prohibition of sending certain materials to a registered contact point -- Exception for consent.

- (1) A person may not send, cause to be sent, or conspire with a third party to send a communication to a contact point or domain that has been registered for more than 30 calendar days with the division under Section 13-39-201 if the communication:
 - (a) has the primary purpose of advertising or promoting a product or service that a minor is prohibited by law from purchasing; or
 - (b) contains or has the primary purpose of advertising or promoting material that is harmful to minors, as defined in Section 76-10-1201.
- (2) Except as provided in Subsection (4), consent of a minor is not a defense to a violation of this section.
- (3) An Internet service provider does not violate this section for solely transmitting a message across the network of the Internet service provider.
- (4)
 - (a) Notwithstanding Subsection (1), a person may send a communication to a contact point if, before sending the communication, the person sending the communication receives consent from an adult who controls the contact point.

- (b) Any person who proposes to send a communication under Subsection (4)(a) shall:
 - (i) verify the age of the adult who controls the contact point by inspecting the adult's government-issued identification card in a face-to-face transaction;
 - (ii) obtain a written record indicating the adult's consent that is signed by the adult;
 - (iii) include in each communication:
 - (A) a notice that the adult may rescind the consent; and
 - (B) information that allows the adult to opt out of receiving future communications; and
 - (iv) notify the division that the person intends to send communications under this Subsection (4).
- (c) The division shall implement rules to verify that a person providing notification under Subsection (4)(b)(iv) complies with this Subsection (4).

Amended by Chapter 336, 2006 General Session

13-39-203 Rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to establish procedures under which:

- (1)
 - (a) a person may register a contact point with the division under Section 13-39-201, including:
 - (i) the information necessary to register an instant message identity; and
 - (ii) for purposes of Subsection 13-39-102(1)(b)(iv), an electronic address that is similar to a contact point listed in Subsection 13-39-102(1); and
 - (b) a school or other institution that primarily serves minors may register its domain name with the division under Section 13-39-201;
- (2) the division shall:
 - (a) provide a mechanism under which a person described in Subsection 13-39-201(4) may verify compliance with the registry to remove registered contact points from the person's communications; and
 - (b) establish the mechanism described in Subsection (2)(a) in a manner that protects the privacy and security of a contact point registered with the division under Section 13-39-201; and
- (3) the division may:
 - (a) implement a program offering discounted fees to a sender who meets enhanced security conditions established and verified by the division, the third party registry provider, or a designee; and
 - (b) allow the third party registry provider to assist in any public or industry awareness campaign promoting the registry.

Amended by Chapter 382, 2008 General Session

Part 3 Enforcement

13-39-301 Criminal penalty.

- (1) A person who violates Section 13-39-202 commits a computer crime and:
 - (a) is guilty of a class B misdemeanor for a first offense with respect to a contact point registered with the division under Subsection 13-39-201(3)(a); and

- (b) is guilty of a class A misdemeanor:
 - (i) for each subsequent violation with respect to a contact point registered with the division under Subsection 13-39-201(3)(a); or
 - (ii) for each violation with respect to a domain name registered with the division under Subsection 13-39-201(3)(b).
- (2) A person commits a computer crime and is guilty of a second degree felony if the person:
 - (a) uses information obtained from the division under this chapter to violate Section 13-39-202;
 - (b) improperly:
 - (i) obtains contact points from the registry; or
 - (ii) attempts to obtain contact points from the registry; or
 - (c) uses, or transfers to a third party to use, information from the registry to send a solicitation.
- (3) A criminal conviction or penalty under this section does not relieve a person from civil liability in an action under Section 13-39-302.
- (4) Each communication sent in violation of Section 13-39-202 is a separate offense under this section.

Enacted by Chapter 338, 2004 General Session

13-39-302 Civil action for violation.

- (1) For a violation of Section 13-39-202, an action may be brought by:
 - (a) a user of a contact point or domain name registered with the division under Section 13-39-201; or
 - (b) a legal guardian of a user described in Subsection (1)(a).
- (2) In each action under Subsection (1):
 - (a) a person described in Subsection (1) may recover the greater of:
 - (i) actual damages; or
 - (ii) \$1,000 for each communication sent in violation of Section 13-39-202; and
 - (b) the prevailing party shall be awarded costs and reasonable attorney fees.

Enacted by Chapter 338, 2004 General Session

13-39-303 Administrative enforcement.

- (1) The division shall:
 - (a) investigate violations of this chapter; and
 - (b) assess cease and desist orders and administrative fines under this section for violations of this chapter.
- (2) A person who violates this chapter is subject to:
 - (a) a cease and desist order; and
 - (b) an administrative fine of not more than \$2,500 for each separate communication sent in violation of Section 13-39-202.
- (3)
 - (a) A person who intentionally violates this chapter is subject to an administrative fine of not more than \$5,000 for each communication intentionally sent in violation of Section 13-39-202.
 - (b) For purposes of this section, a person intentionally violates this chapter if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.
- (4) All administrative fines collected under this section shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.

Enacted by Chapter 338, 2004 General Session

13-39-304 Defenses.

It is a defense to an action brought under this chapter that a person:

- (1) reasonably relied on the mechanism established by the division under Subsection 13-39-203(2); and
- (2) took reasonable measures to comply with this chapter.

Enacted by Chapter 338, 2004 General Session